

NTSB Order No. EA-5051

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 1st day of August, 2003

MARION C. BLAKEY  
Administrator,  
Federal Aviation Administration,  
  
Complainant,  
  
v.  
  
JASON EARL BLAKE,  
  
Respondent.

Docket SE-16484

Respondent appeals the oral initial decision of Administrative Law Judge Patrick G. Geraghty, issued on July 10, 2002.<sup>1</sup> By that decision, the law judge upheld the Administrator's allegation that respondent violated sections 61.113(a), 105.43(a)(1) and 105.43(a)(2)(i) of the Federal

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Aviation Regulations (FARs),<sup>2</sup> and affirmed a 150-day suspension of respondent's commercial pilot certificate (a reduction of the 180-day suspension sought by the Administrator).<sup>3</sup> We deny

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<sup>2</sup> FAR sections 61.113, 14 C.F.R. Part 61, and 105.43, 14 C.F.R. Part 105, provide, in relevant part, as follows:

**Sec. 61.113 Private pilot privileges and limitations:  
Pilot in command.**

(a) Except as provided in paragraphs (b) through (g) of this section, no person who holds a private pilot certificate may act as pilot in command of an aircraft that is carrying passengers or property for compensation or hire; nor may that person, for compensation or hire, act as pilot in command of an aircraft.

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**Sec. 105.43 Parachute equipment and packing requirements.**

(a) No person may make a parachute jump, and no pilot in command of an aircraft may allow any person to make a parachute jump from that aircraft, unless that person is wearing a single harness dual parachute pack, having at least one main parachute and one approved auxiliary parachute that are packed as follows:

(1) The main parachute must have been packed by a certificated parachute rigger, or by the person making the jump, within 120 days before the date of its use.

(2) The auxiliary must have been packed by a certificated and appropriately rated parachute rigger:

(i) Within 120 days before the date of use, if its canopy, shroud, and harness are composed exclusively of nylon, rayon, or other similar synthetic fiber or material that is substantially resistant to damage from mold, mildew, or other fungi and other rotting agents propagated in a moist environment;

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<sup>3</sup> The Administrator did not appeal the law judge's modification of sanction.

respondent's appeal.

The hearing evidence showed that on February 18, 2001, respondent was the pilot-in-command of a single-engine aircraft carrying skydivers aloft near Shreveport, Louisiana. One of the skydivers, Jason Fisher, was killed when his parachutes did not deploy after he jumped from the aircraft.<sup>4</sup> The skydiving was conducted under the auspices of Ark-La-Tex Skydivers, Inc., d/b/a S'port City Skydivers ("S'port City"), an allegedly non-profit skydiving club. At the time of the accident flight, respondent held a private pilot certificate.<sup>5</sup> Mr. Fisher was not a member of the club, but had paid to make a jump on the flight. Exhibit ("Ex.") R-2. Respondent claims that he confirmed that the main and auxiliary parachutes worn by Mr. Fisher, and supplied by S'port City, had been inspected and repacked as required by FAA regulations.<sup>6</sup>

The FAA investigated the skydiving accident. The auxiliary parachute packing record found still attached to the pack on Mr. Fisher's body indicated that it was last packed on August 10,

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<sup>4</sup> According to testimony of a former employee, Mr. Adrian May, the aircraft was owned by Bruce Deville, the president of S'port City and also the local fixed base operator.

<sup>5</sup> Respondent had become a commercial pilot certificate holder by the time of the hearing. The 150-day suspension was imposed upon that pilot certificate.

<sup>6</sup> Respondent testified that prior to the flight he looked at the parachute packing records for the parachute pack worn by Mr. Fisher. He also testified that before the accident flight, he asked Mr. Bruce Deville, the owner of the parachute (and a certified parachute rigger), whether all of the parachutes being utilized were "ready to go," and that Mr. Deville assured him that they were.

2000, more than 120 days prior to the fatal jump. Exhibit ("Ex.") A-1. At the hearing, however, respondent claimed that a newer packing record he had seen prior to the accident flight indicated the auxiliary parachute had been repacked on January 5, 2001.<sup>7</sup> Ex. A-5.

During the course of its investigation of the skydiving accident, the FAA received a letter from the President of S'port City, Bruce Deville. In his April 11, 2001 letter, Mr. Deville stated that he and respondent had "reviewed the repack cycle of each student parachute ... on or about February 5<sup>th</sup> ... [and] concluded none were due until April 2001." Ex. A-2. Mr. Deville also stated that he was confident that a previous manager (who, like Mr. Deville, was also a certified parachute rigger), Adrian May, who had resigned in January, would have ensured that the auxiliary parachute was repacked by December if its last log entry was August 10, 2000. At the hearing, however, Mr. May testified that he never repacked parachutes in Shreveport because his tools and seal were in Texas, and, in fact, his agreement with Mr. Deville was that Mr. Deville would have the parachute rigging concession at Shreveport. Mr. Deville on May 2, 2001, provided FAA inspectors with copies of office records that he claimed were for the auxiliary parachute that recorded an inspection and repacking on January 5, 2001. Ex. A-3. Finally, on September 19th or 20th, 2001, the FAA received a copy of a parachute packing record for the auxiliary parachute, purportedly

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<sup>7</sup> S'port City maintained no records for the main parachute worn

a replacement for the record found on the auxiliary parachute after the accident, showing a repacking date of January 5, 2001. This record was allegedly found covered by dust and cobwebs in April or early May behind a parachute rack in S'port City's rigging room by a janitorial worker and given to respondent who claimed to have turned it over to his non-attorney representative (who did not appear on respondent's behalf at the hearing). Contrary to the assertions in Mr. Deville's April 11th letter to the FAA about his certainty that Mr. May would have repacked the auxiliary parachute, both Exhibits A-3 and A-5 indicate that Mr. Deville had done so.

Mr. Fisher's fiancé, Angela Gilmer, and at least one other witness, testified that there was no requirement for a skydiver to be a member of S'port City to jump, and, instead, all that was required was to pay the expenses and sign a liability waiver. Ms. Gilmer testified that neither she nor Mr. Fisher, who had jumped with S'port City several weeks prior to Mr. Fisher's fatal skydiving accident, packed their own parachutes and, instead, used equipment provided by S'port City. Respondent testified that he was a member of S'port City. Respondent and others affiliated With S'port City testified that respondent and all the skydivers aboard respondent's aircraft paid a pro rata share of the cost of operating the rental aircraft, in accordance with S'port City's custom and his understanding of the FAR

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(..continued)  
by Mr. Fisher.

requirements applicable to private pilots.<sup>8</sup>

At the conclusion of the hearing, the law judge upheld all three regulatory violations alleged by the Administrator. Turning first to the parachute allegations, the law judge found that the records pertaining to the auxiliary parachute, specifically Exhibits A-1, A-3 and A-5, and the explanations provided for those records, and the testimony regarding the main parachute, established by a preponderance of the evidence that neither the main nor the auxiliary parachute used by Mr. Fisher on February 18<sup>th</sup> were in compliance with the FARs. Accordingly, he affirmed the violations of the two subsections of FAR section 105.43.

The law judge also upheld the alleged violation of FAR section 61.113, finding that the flight did not fall within the "shared-expenses" exception to the prohibition against a private pilot operating a flight for compensation or hire.<sup>9</sup> The law judge reasoned that respondent's purpose in making the flight (i.e., to pilot the jump aircraft, whether to log the flight time or just to gain experience), was not common to that of the

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<sup>8</sup> An investigating FAA inspector testified that in the course of his investigation respondent told him that he received discounted jumping rates for parachuting activities in return for piloting jump aircraft for S'port City. Respondent also admitted during questioning by the law judge that he logged some of the approximately 30 hours of flight time he accrued flying jump aircraft for S'port City.

<sup>9</sup> FAR section 61.113(c) permits a private pilot to share the pro rata operating expenses of a flight with passengers without running afoul of the proscriptions against carriage of passengers for compensation for hire.

passengers (i.e., the skydivers who paid to jump out of his aircraft).

On appeal, respondent, now pro se, argues numerous points of perceived error. The Administrator opposes the appeal and filed a reply brief.<sup>10</sup> We address the issues raised by respondent in turn. First, respondent argues that the law judge erred in finding a violation of FAR section 61.113, because, among other things, there was no evidence that respondent was compensated for the flight on February 18<sup>th</sup> and the law judge misapplied Board precedent regarding sharing expenses.<sup>11</sup> The preponderance of the evidence, corroborated by witnesses called by the Administrator, indicates that there were five persons, including respondent, aboard the aircraft from which Mr. Fisher jumped, and each, including respondent, paid or were expected to pay an equal share of the \$60 aircraft rental price. Respondent testified that it was his understanding that, as a private pilot, he could operate

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<sup>10</sup> Attached to respondent's appeal brief is a 1991 memorandum from the Administrator's Assistant Chief Counsel regarding "Pilot Certification for Parachute Operations." Respondent makes no showing regarding why this evidence was not (or could not have been) presented at the hearing. Respondent has also submitted a "Reply to the Administrator's Response to Respondent's Appeal," which includes appended affidavits from several witnesses, but, again, provides no basis under our rules for us to accept it at this juncture. These submissions will not be considered. Rule 48(e), 49 C.F.R. Part 821.

<sup>11</sup> Respondent also argues that the law judge improperly "curtailed the proceedings" to his detriment and asks, in the alternative to a favorable ruling on his appeal, that we order a new hearing before a different law judge. Our review of the hearing transcript makes it clear to us, however, that the law judge properly and impartially exercised his discretion in controlling the hearing and limiting testimony to relevant issues.

the aircraft for the "club" as long as he shared the expenses of the flight equally with all of the skydivers. However, the preponderance of the evidence also indicates that, in essence, S'port City held itself out to the public to conduct skydiving operations. Several witnesses testified that anyone could jump, provided they paid their fees and signed a liability waiver. Mr. Fisher, the decedent, was not a member of the club, nor was his fiancé; both paid S'port City in order to go skydiving and to use its parachutes. The fact that S'port City Skydivers was intended to be a club or that it's core or routine participants were, like respondent, members and parachuting enthusiasts sharing a common interest does not alter the fact that "non-members" from the public-at-large were willingly allowed to participate upon the exchange of money. We therefore find no error in the law judge's conclusion that the flight on February 18<sup>th</sup> was "for hire" and that respondent, a private pilot at the time whose purpose in making the flight was different from the passengers he carried, violated FAR section 61.113(a). See, e.g., Administrator v. Rawlins, NTSB Order No. EA-4583 at 4 (1997).

Respondent also argues that the law judge erred in finding the violations of FAR sections 105.43(a)(1) and 105.43(a)(2)(i). Turning first to the alleged violation of FAR section 105.43(a)(1), respondent argues that there was insufficient evidence to support the law judge's finding that the Administrator proved her allegations. The evidence indicates that Jeffery Darnell packed the main parachute worn on February



18th by Mr. Fisher. Mr. Darnell, a member of S'port City, was not a certified parachute rigger. An FAA inspector testified that the regulations permit non-certificated persons to repack parachutes, but only under "direct supervision" of a certificated rigger. The inspector testified that when he queried Mr. Darnell on this issue, Mr. Darnell indicated that when he packed the main parachute Mr. Deville was not present. FAR Section 65.125(a)(2) -- 14 C.F.R. Part 65 -- permits a certificated master parachute rigger (such as Mr. Deville) to "[s]upervise other persons in packing, maintaining, or altering any type of parachute for which the certificated parachute rigger is rated in accordance with [section] 105.43(a) or [section] 105.45(b)(1) of this chapter."<sup>12</sup>

Respondent observes that the FAR contain no definition of "supervision," and argues that direct supervision is not required under other FAR provisions. Specifically, he notes that FAR section 43.3(d) states that "[a] person working under the supervision of a holder of a mechanic or repairman certificate may perform the maintenance, preventive maintenance, and alterations that his supervisor is authorized to perform, if the supervisor personally observes the work being done *to the extent necessary* to ensure that it is being done properly and if the supervisor is readily available, in person, for consultation." 14 C.F.R Part 43 (emphasis added). We think it unnecessary to

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<sup>12</sup> Although subpoenaed by the Administrator, Mr. Darnell did not appear at the hearing, and the FAA inspector who spoke to Mr. Darnell testified, over respondent's objection, regarding what Darnell told him.

reach the issue of whether the same standard applies under Part 65. According to Mr. Deville's original statement to the FAA, he *assumed* someone else (namely, Adrian May) packed it, an assumption that precludes any finding that he was even aware that Mr. Darnell had repacked it, much less that he oversaw his performance of the task. See Ex. A-2. The only evidence presented to indicate that Mr. Deville packed the main parachute was respondent's vague, and ultimately discredited, testimony. See Tr. at 173-175. We think the record thus supports the law judge's affirming of the violation of FAR section 105.43(a)(1).<sup>13</sup>

Turning to the issues surrounding the auxiliary parachute and the alleged violation of FAR section 105.43(a)(2)(i), respondent testified that he checked the packing record attached to the parachute pack and found the auxiliary parachute to have been packed within the required 120 days. The law judge clearly did not credit this testimony, believing, instead, that the log found with the parachute demonstrated that a timely repacking had not been accomplished. None of the arguments respondent offers on appeal convince us that the law judge erred in so concluding, or in affirming the violation of FAR section 105.43(a)(2)(i).

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<sup>13</sup> Although respondent testified that he checked records for the main chute worn by Mr. Fisher (Tr. at 162, 175.), he produced none at the hearing to corroborate his testimony. The law judge did not find respondent a credible witness, a factor respondent's arguments on appeal do not acknowledge. The law judge also did not credit the documents that purported to show that the auxiliary parachute was properly packed and inspected. We do not disturb our law judge's credibility findings absent a showing that they were clearly erroneous. See, e.g., Administrator v. Smith, 5 NTSB 1560, 1563 (1986). No such showing here has been made.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied;
2. The 150-day suspension of respondent's pilot certificate is affirmed<sup>14</sup>; and
3. The 150-day suspension of respondent's certificate shall begin 30 days after the service date indicated on this opinion and order.

ENGLEMAN, Chairman, ROSENKER, Vice Chairman, and GOGLIA, CARMODY, and HEALING, Members of the Board, concurred in the above opinion and order.

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<sup>14</sup> For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. 61.19(f).